

REMARKS

I. Introduction

Claims 1 – 4 and 6 – 13 are pending in this application. Claims 1, 2, 6, 7, 10, and 11 have been amended to more particularly point out the subject matter of the invention. Care has been taken to avoid the introduction of new matter. In view of the foregoing amendments and the following remarks, Applicants respectfully submit that all pending claims are in condition for allowance.

II. Claim Rejections Under 35 U.S.C. § 102

Claims 1 – 4 and 6 – 14 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,167,031 to Olofsson. Applicants traverse this rejection for at least the following reasons.

The Examiner continues to equate the change determination unit which determines whether or not to change the transmission rate for the terminal apparatus based on a remaining period recited in the pending claims, with the process of selecting an optimum modulation and channel coding combination on an RF link by using link quality parameters dispersed over a period of time, as disclosed by Olofsson. The claims have been amended to more particularly define the “remaining period.”

As recited in the independent claims, predetermined time slots in a plurality of frames consecutive over a predetermined period are allocated to a terminal apparatus. The base station also allocates, to another terminal apparatus, predetermined time slots in a plurality of frames consecutive over a period other than said predetermined period. A change determination unit determines to change the transmission rate for a terminal apparatus if a remaining period is equal to or greater than a threshold value, and determines not to change the transmission rate if the remaining period is not equal to or greater than the threshold value. As recited in the claims, the

remaining period is a period between the planned timing for changing a transmission rate and the end timing of the period defined by a plurality of frames in which time slots are allocated.

As the Examiner notes, Olofsson appears to disclose the selection of a modulation and channel coding combination based on various measured "link quality parameters." Olofsson does not, however, disclose or even suggest determining whether to change a transmission rate based on a remaining period. In Olofsson, it is the measured "link quality parameters" which dictate whether a change is to be made, not a remaining period as defined in the pending claims.

Accordingly, as anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed, either expressly or inherently (noting that "inherency may not be established by probabilities or possibilities"), *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999)), in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the foregoing, it is submitted that the Oloffson does not anticipate independent claims 1, 6, and 10.

Claims 2 – 4, 7 – 9, and 11 – 13 depend from one of the independent claims. Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Harness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as the independent claims are patentable for at least the reasons set forth above, it is respectfully submitted that all dependent claims are also in condition for allowance. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

III. Conclusion

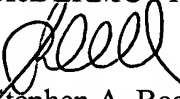
Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited.

If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Stephen A. Becker
Registration No. 26,527

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 SAB:DAB
Facsimile: 202.756.8087
Date: January 23, 2007

**Please recognize our Customer No. 20277
as our correspondence address.**